

DOUGLAS C. LIECHTY

IBLA 88-593

Decided April 24, 1989

Appeal from a decision of the California State Office, Bureau of Land Management, declaring unpatented mining claim CAMC 23352 abandoned and void.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work--Mining Claims: Abandonment

The conclusive presumption of abandonment for failure to comply with the recordation requirements of the Federal Land Policy and Management Act of 1976, 43 U.S.C. | 1744(a) (1982), is self-operative and does not depend upon any act or decision of an administrative official. Where a claim is omitted from the express listing of a group of claims for which annual assessment work was performed but was depicted on a map accompanying the affidavit of assessment work, it is wholly a matter of conjecture whether the claim not specifically identified was intended to be listed as the object of assessment work expenditures.

APPEARANCES: Douglas C. Liechty, pro se.

OPINION BY CHIEF ADMINISTRATIVE JUDGE HORTON

Douglas C. Liechty has appealed a decision dated July 22, 1988, issued by the California State Office, Bureau of Land Management (BLM), which declared the Scotia #3 unpatented lode mining claim, CAMC 23352, to be abandoned and void by operation of law because an affidavit of assessment work or notice of intention to hold was not received by BLM for the 1987 "assessment" year. 1/

1/ We note that BLM's decision incorrectly uses the term "assessment year." The assessment year is established by 30 U.S.C. | 28 (1982) and runs from Sept. 1 to Sept. 1 of the following year. The "year" for filing copies of affidavits of assessment work with BLM is set by 43 U.S.C. | 1744 (1982) and runs from Jan. 1 through Dec. 30.

With his statement of reasons for appeal, Liechty has enclosed a copy of the assessment work notice as filed with BLM in 1987 for a group of contiguous lode mining claims. Liechty states that the Scotia #3 claim was inadvertently not listed on the assessment work notice but was shown on a map attached thereto. Liechty further states his lode claims are contiguous and interrelated and that the work done benefited all the claims, including the Scotia #3 claim. Liechty requests that, since the mining claim was shown on a map filed with the assessment work notice, the claim should not be declared abandoned and void.

Section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. | 1744 (1982), and 43 CFR 3833.2-1 require the owner of an unpatented mining claim located on public land to file evidence of assessment work performed or a notice of intention to hold the mining claim with the proper BLM office prior to December 31 of each year. Failure to file one of the two instruments within the prescribed time period conclusively constitutes an abandonment of the mining claim. 43 U.S.C | 1744(c) (1982); 43 CFR 3833.4. The provisions of 43 CFR 3833.2-2 require that the notice of assessment work include the serial number assigned to the claim by BLM.

In Philip Brandl, 54 IBLA 343 (1981), the Board, in effect, expanded the types of filings that would be acceptable by including "the proper identification of the claim by name" as an alternative to the submission of the correct recordation number given by BLM. In Brandl, the claimant had failed to identify the claim by name or serial number and his filing was held inadequate. See also Arley R. Taylor, 86 IBLA 283 (1985) (filing inadequate where claimant failed to identify claims by name and misentered the serial number on the proof of labor).

[1] The question presented in this case is whether the map accompanying appellant's 1987 affidavit of assessment work, which depicts the Scotia #3 lode mining claim among other contiguous claims owned by appellant that were expressly identified in the affidavit of assessment work, may be relied upon as evidencing that assessment work was also performed for the Scotia #3 claim. We hold not.

The Federal requirements for specificity in claim identification are necessary because there is no discretion under the statute for BLM to determine that a claim has been abandoned. William J. Booth, 73 IBLA 274 (1983). The conclusive presumption of abandonment for failure to comply with the recordation requirements of FLPMA is self-operative and does not depend upon any act or decision of an administrative official. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

Here, it is wholly a matter of conjecture whether a claim omitted from the express listing of claims for which annual assessment work was performed was nevertheless intended to be so listed as evidenced by a map depicting the claim and attached to claimant's affidavit of assessment work. The map is not even referred to in the affidavit and therefore the purpose of its appendage is itself a matter of conjecture. Speculation that a claimant intended to include a claim in a properly submitted document is outside the

authority of the Department. In this case, since appellant failed to unambiguously identify the Scotia #3 claim in his affidavit of assessment work by name or serial number, the claim was properly deemed to be abandoned and void.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Wm. Philip Horton
Chief Administrative Judge

I concur:

Gail M. Frazier
Administrative Judge

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